Where: Scheduled Payment' = scheduled payment after an adjustment for an unscheduled withdrawal

Scheduled Payment = scheduled payment prior to an adjustment for an unscheduled withdrawal

US Withdrawal$_t$ = unscheduled withdrawal made at time t

Account Value$_t$ = account value at time t, prior to the unscheduled withdrawal.

Bart

Please cancel Claims 44-51 without prejudice. Applicants specifically reserve the right to continue prosecution of these claims in related CIP application Serial No. 09/804,667 filed on March 12, 2001.

REMARKS

In response to the Official Office Action mailed July 1, 2002, Claims 35-38 have been amended and Claims 44-51 canceled, without prejudice. Applicants and the undersigned respectfully submit that all pending claims are allowable over the art of record for the reasons set forth below. Accordingly, reconsideration and allowance are respectfully requested.

This invention relates to computerized methods for administering variable annuity benefit plans having guaranteed minimum payment features, and such plans having systematic withdrawal features. Several embodiments which incorporate the subject invention are disclosed and claimed. As discussed in the specification and illustrated in the various drawings, a

prominent feature of the invention is the assumption of risk by the company in paying guaranteed minimum amounts under the plans which are higher (by virtue of the guarantee) than would otherwise be paid, and the provision of a mechanism whereby the company can recoup offsetting amounts from future payments under certain circumstances. These features offer the financial entity offering such plans, and the buyers of such plans, increased flexibility and options not previously available.

In the Office Action, all of the claims are rejected under 35 U.S.C. Section 103(a) as being unpatentable over U.S. Patent No. 5,933,815 to Golden et al. ("Golden") either alone (Claims 44-51) or in view of U.S. Patent No. 6,253,192 to Corlett et al. ("Corlett"). The latter combination was applied in rejecting Claims 1-3, and 7-43. Claims 4-6 were rejected as being unpatentable over Golden in view of U.S. Patent No. 6,085,174 to Edelman ("Edelman"). Each of these references is discussed separately below.

THE GOLDEN PATENT

Golden describes a method and system for administering a program for providing a person with a stream of lifetime income payments with a degree of initial liquidity. Golden's program defines two periods. The first period begins on a date certain and has a definite duration. The second period begins after the end of the first, and extends until at least the end of the person's life.

Golden describes four embodiments of this system and method, each of which is separately discussed below. The first embodiment is "fully guaranteed," meaning that the financial vehicles purchased to fund the periodic distributions are guaranteed vehicles, and the resulting periodic distributions are, in turn, fixed and guaranteed. In this context, the concept of a guaranteed minimum payment is inapplicable. The remaining embodiments are partially non-guaranteed ("PNG") programs. These embodiments include features characterized by Golden as

guaranteed minimum payment features. All of these embodiments are discussed below in additional detail.

EMBODIMENT NO. 1

This embodiment includes a first and second period. During the first period, the person receives a series of fixed payments, and the ability to withdraw additional amounts from an "account." These payments are funded from a portion of an initial contribution which is used to purchase a series of guaranteed financial vehicles (hereafter "GIROs") having a determinable market value at any time. The vehicles are liquidated as needed to fund the periodic payments and any partial or full withdrawals. The market value of the vehicles constitutes the "account" against which withdrawals may be made. A second portion (i.e., the remainder) of the initial contribution is used to purchase a life contingent annuity ("LCA") to provide income payments to the person and/or a joint annuitant during the second period.

The amounts of the periodic payments in both periods are fixed (subject to adjustments in the first period if the person makes a full or partial withdrawal) and are determined by the system based on information provided by the person and data (interest rates, mortality tables, etc.) stored in the system. Information obtained from the person includes the desired length of the first period, the length of any deferral period, type of payment plan, age, gender, etc. The person is given a choice at the outset which is particularly significant, given the Examiner's interpretation of Golden in the rejected claims. That choice is represented in the flow chart of Figure 2a as step 52. The choice is to specify the amount of the initial contribution **or** the amount of a desired target payment for the periodic distribution. With reference to Figure 2c, if a target payment amount is specified (step 90), the initial contribution amount is calculated (step 92). Alternatively, if an initial contribution amount is specified, the amounts of the periodic payments (termed the "base payments") are calculated (step 94). Neither the specified target payment amounts nor the calculated base payment amounts are "minimum payments," as

that concept has no applicability in this embodiment. Neither are adjusted over the course of the first or second period, other than in response to withdrawals in the first period or in accordance with a payment plan selected by the person at the outset. Specifically, neither of these two alternatives for determining the amounts of the periodic payments provide for comparing the amount of a periodic payment to a guaranteed minimum payment (there is no such thing in this embodiment), and adjusting the amount up to the minimum, or down under the condition set forth in step f of Applicant's Claim 1.

THE OTHER EMBODIMENTS

In the first embodiment, the financial vehicles purchased by the initial contribution (both GIROs and the LCA) are guaranteed. The resulting lifetime income payments are similarly guaranteed and determinable at the outset, subject only to adjustments in the first period in the event of withdrawals.

In the other embodiments (i.e., the three PNG embodiments), a portion of the initial contribution is used to purchase guaranteed financial vehicles (such as GIROs) for the first period, a portion is used to purchase a guaranteed LCA for the second period, and a portion is used to purchase certain non-guaranteed investment vehicles, such as stocks and mutual funds. These non-guaranteed assets generally provide for greater returns (or, at least, the prospect for greater returns), although they entail more risk.

THE FIRST PNG EMBODIMENT

The first PNG embodiment provides a type of "guaranteed minimum level" payment in the first and second periods. The level of payments may be increased if the non-guaranteed investments perform well. However, the level can never be decreased below the amount of the initial distribution in the first period. This is why Golden characterizes the initial distribution as a "guaranteed minimum."

In this embodiment, the allocation of the initial contribution of assets is made in the same way as in the fully guaranteed first embodiment. That is, the initial contribution is allocated among a series of GIROs with *regularly increasing distributions* for the first period, and an LCA for the second period. An initial GIRO is purchased to fund the initial distribution. However, the remaining GIROs and LCA purchased at the outset are **not** sufficient to fund the regularly increasing distributions, but rather are sufficient only to fund future distributions at the same level as the initial distribution. These initial purchases use less than all of the funds initially allocated. The remaining funds are invested in non-guaranteed vehicles. Additional GIROs and LCA segments are purchased from these remaining funds at any time up to the start of the second period. Thus, the initial distribution becomes the "guaranteed minimum" distribution. Actual subsequent distributions are increased as the non-guaranteed investment vehicles are liquidated. However, even if the values of these investments fall to zero, the originally purchased GIROs and LCA will provide distributions equal to the initial distribution. There is no risk to the issuing company, specifically, no risk that the company will have to put in its own money to raise the scheduled payments to the "minimum level."

In this first PNG embodiment, the actual subsequent distributions made under the plan are not compared to a "guaranteed minimum payment." Sufficient GIROs and LCA segments are purchased at the outset to fund all distributions at the "guaranteed minimum" (i.e. initial) level. The only determination made is whether additional GIROs (or additional LCA segments at the end of the first period) are to be purchased with that portion of the initial contribution invested in non-guaranteed assets to increase the distribution above the initial level. Specifically, the ongoing or "current" payments periodically determined are never adjusted upwardly to a minimum payment level (i.e., they could never be determined to be at a level below the initial or "minimum" distribution), and they are not adjusted downwardly if the

periodically-determined amount is greater than the initial distribution, as required under the condition set forth, for example, in step f of Applicants' Claim 1.

THE SECOND PNG EMBODIMENT

As in the first PNG embodiment, this second embodiment purports to provide a type of "guaranteed minimum level" of income during a first period funded by an initial purchase of GIROs, and a target guaranteed income in the second period funded by an LCA. As with the first PNG embodiment, a first portion of the initial contribution is allocated to purchase one or more GIROs for the first period, a second portion is allocated to purchase the LCA guaranteed to provide a given level of income during the second period, and a third portion is invested during the first period in non-guaranteed financial vehicles. At the end of the first period, an intermediate period is entered in which one or more GIROs are purchased with proceeds from the non-guaranteed financial vehicles to provide a guaranteed level of income for the duration of the intermediate period. If the non-guaranteed investments have done well, the GIROs purchased during the intermediate period will provide an increased level of guaranteed income during that period. If the non-guaranteed investments have done poorly, a reduced level of guaranteed income is provided. A series of such intermediate periods may ensue. The first and intermediate period(s) are selected to span the time from the beginning of the first period to the beginning of the second period, which is funded by the LCA. Income payments are fixed and guaranteed during the first and second periods, but are not guaranteed during the intermediate period(s) and may fluctuate up and down depending upon performance of the non-guaranteed investments. Thus, the first and second periods are like PNG embodiment No. 1, while the intermediate periods provide no minimum payment features whatsoever. Accordingly, this embodiment cannot form the basis of the rejections set forth in the Office Action.

THE THIRD PNG EMBODIMENT

The third PNG embodiment is described as a "hybrid" of the first two embodiments, and involves at least two types of intermediate periods. At the outset, GIROs sufficient to provide the "minimum" (i.e., non-increasing) distributions are purchased for the first period and the first intermediate period. The difference in the amount required to purchase these GIROs and the amount required to purchase GIROs which would provide for increasing distributions during these periods is invested in the market. No GIROs are purchased for the second intermediate period, and all funds which would otherwise be used for that purpose are also invested in non-guaranteed vehicles. An LCA for the second period is purchased which will provide for a fixed, guaranteed periodic distribution equal to the initial "minimum" distribution. Assuming the non-guaranteed investments increase in value, additional GIROs may be purchased for the intermediate periods, and additional LCA segments may be purchased for the second period. This approach provides the same type of "guaranteed minimum" distributions during the first and second periods and the first intermediate period as in the second PNG embodiment, but no guaranteed minimum distribution during the remaining intermediate period(s).

THE CORLETT PATENT

Corlett discloses a method of personal financial planning in which a financial model is created from data relating to a subject's income, expenses, assets and liabilities. A planning rules database is created from data collected in interviews with the subject to ascertain financial objectives, preferences and other information. The system can project an unplanned future financial situation of the subject by applying known financial principles to income, expense, asset and liability information. Rules from the planning rules database are selected and applied to the unplanned future financial situation to calculate a planned future financial situation, and the results of the planned and unplanned situations are compared.

A part of the overall method described by Corlett is an automatic allocation and funding program (32). The relationship of this program to other parts of Corlett's method is shown in Figures 1a and 1b. The automatic allocation and funding program is broken down and illustrated in more detail in Figures 5a and 5b. When the planned and unplanned financial projections are prepared, periods of cash flow surplus and/or cash flow deficits are identified. The automatic allocation and funding program described in connection with Figures 5a and 5b utilizes information collected from the subject and entered into a rules planning database relating to the allocation of surpluses and the funding of deficits. In accordance with the rules, the system makes suggestions as to how surpluses should be allocated for a given "Calc" year. The program also identifies anticipated deficits and, using rules from the planning rules database, suggests alternatives for liquidating assets, cutting expenses, etc. to fund these deficits.

THE EDELMAN PATENT

Edelman describes a computer-based system which gathers data regarding an individual and that individual's retirement accounts. In response to requests for withdrawals by the individual, the system uses the gathered data and rules stored in the system to approve or disapprove a withdrawal request for the purpose of minimizing adverse tax impacts which might otherwise be incurred. The system may be used by, or in conjunction with, a trustee. The goal of the system is to prevent or delay withdrawal of resources so that the resources may grow tax deferred for a predetermined period of time, or until the occurrence of a predetermined event.

THE REJECTIONS OF CLAIMS 1-3, AND 7-34

Claims 1-3 and 7-34 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Golden in view of Corlett. Applicants and the undersigned respectfully request reconsideration of these rejections for the following reasons.

Reference is made to the detailed discussion of Golden set forth above. As a preliminary matter, Applicants note that Golden does not disclose a computerized method for administering a variable annuity, as stated by the Examiner on page 2 of the Office Action. Although Golden does mention annuities generally, and describes, in column 1, different types of annuities, he does not refer to ***variable*** annuities, and does not provide a system or method for administering a variable annuity. Golden does utilize a life contingent annuity (LCA) in providing income payments in the second period of his various embodiments. However, the LCAs referred to are always described as providing a fixed and guaranteed series of income payments.

With specific reference to Claims 1-3, Golden's embodiment No. 1 does not include a guaranteed minimum payment feature. Accordingly, this embodiment cannot include the step of comparing a calculated current benefit payment with a guaranteed minimum payment (step c of Claim1). Neither can it include the adjusting steps (steps d and f) of Claim 1.

The three PNG embodiments disclosed by Golden purport to include guaranteed minimum payments during at least the first and second periods defined by Golden. However, the current benefit payment as calculated under these programs ***will always be greater than*** (or at least equal to) the guaranteed minimum payment. These embodiments do not disclose the step of comparing a calculated current benefit payment to the so-called guaranteed minimum payment, and do not describe adjusting the amount of the periodically determined current benefit payment upwardly or downwardly in relation to the guaranteed minimum. Indeed, a periodic distribution payment could never be adjusted upwardly to the "minimum" level, since the calculated periodic distribution will never fall below that level. Similarly, the periodically determined current distribution in Golden's program is never adjusted downwardly to or toward the guaranteed minimum under any circumstances. Thus, these embodiments of Golden do not disclose steps c, d or f of Claim 1.

The Examiner agrees that Golden does not disclose the adjusting steps d and f of Claim 1. The Examiner takes the position that Golden can be modified by Corlett to remedy these deficiencies. Applicants and the undersigned respectfully disagree.

First, there is absolutely no motivation or suggestion in either Golden or Corlett that the teachings of these references should be combined. This is particularly apparent since, as described above, there is never a circumstance in any of Golden's disclosed embodiments in which a current distribution would be adjusted, either upwardly or downwardly, to a guaranteed minimum distribution. Thus, there would be no reason to incorporate an adjusting mechanism of any type from Corlett or any other reference.

Secondly, contrary to the Examiner's assertion on page three, Corlett does not disclose a method for adjusting payments upwardly or downwardly relative to a guaranteed minimum payment. Corlett discloses a financial planning program which identifies potential cash flow surpluses and shortages, and makes suggestions based upon previously entered data and preferences as to how surpluses should be invested and/or shortages funded. Each of Golden's disclosed embodiments includes a mechanism for funding the periodic distributions anticipated during each of the defined periods. Thus, there is no need to modify Golden to incorporate Corlett's "automatic allocation and funding program."

The Examiner states, on page three of the Office Action, that it would be obvious to modify Golden with Corlett "to provide beneficiaries with a steady income." However, all of Golden's embodiments provide, in the first and second periods, a fixed (i.e., steady) income or an income which provides certain guaranteed minimum payments as a floor, with the possibility of additional amounts of income depending upon the performance of certain non-guaranteed investments. Certain intermediate periods lack the guaranteed floor, but those periods can be

consciously chosen (or avoided) by the beneficiary. In any event, modification of Golden to incorporate program 32 of Corlett would not impact the performance of such assets.

Even if one were to assume that a reason, motivation or incentive exists to adjust the payments calculated under Golden's programs, the automatic allocation and funding program described by Corlett could not be used for this purpose. As described by Corlett, this program module (element 32 in Figure 2 and Figures 5a and 5b) "allocates a cash flow surplus according to the parameters set in the planning rules database." (Column 13, lines 45-47) If there is surplus cash available in any period identified by the program, Corlett's program 32 decides how such cash should be invested, in accordance with rules and parameters previously programmed into the system. Conversely, if a cash deficit is predicted by the model, Corlett's program 32 decides how to deal with the cash shortfall. No actual assets are purchased or liquidated by the program. The program is merely a planning tool to suggest what should be done in accordance with the rules database created at the outset. If the automatic allocation and funding program of Corlett is added to the system and method disclosed by Golden, it could at most be used to assist in determining when GIROs or other assets should be purchased and/or liquidated in order to fund the ongoing payments to the beneficiary. (Golden, of course, already has the capability to perform these functions.) There is no reason for nor manner in which the automatic allocation and funding program of Corlett could be used to adjust the periodically-determined payments provided to the beneficiary under the programs disclosed by Golden. Accordingly, even if the Examiner's suggested combination is made, the resulting system/method would not perform Applicants' invention as claimed.

Claims 7-34 were also rejected as being unpatentable over Golden in view of Corlett. Each of the independent claims (i.e., Claim 7, 11, 12, 15, 17 and 26) contain limitations which similarly distinguish those claims from Golden and Corlett. Specifically, Claim 7 requires, in step f, "reducing the amount of the current benefit payment if the periodically

determined preliminary benefit payment is greater than the guaranteed minimum payment, and the cumulative total of current benefit payments exceeds the cumulative total of preliminary benefit payments." As noted above, there is never an instance in any of the embodiments disclosed by Golden in which a "current" benefit payment is reduced.

With reference to independent Claim 11, step (c)(1) requires "setting the amount of the current benefit payment to an amount which is less than the amount of the preliminary benefit if the preliminary benefit payment is greater than the guaranteed minimum payment, and if a cumulative total of previous benefit payments exceeds a cumulative total of previously determined preliminary benefit payments." With reference to independent Claim 12, step c requires "periodically determining an amount of the current benefit payment by comparing the guaranteed minimum benefit payment to the preliminary benefit payment and taking the larger of the two." In the Golden embodiments, the current benefit payment is never reduced, and the calculated "preliminary" payment is never smaller than the "guaranteed minimum" payment. Steps c and d of Claim 15, and steps c of Claims 17 and 26 are similarly not disclosed in any of the embodiments of Golden, even if, arguendo, those embodiments are modified by Corlett, as suggested by the Examiner.

For the reasons set forth above, each of the independent Claims 1, 7, 11, 12, 15, 17 and 26 are allowable over the art of record. For the same reasons, the claims depending from each of these independent claims are also allowable.

Independent Claim 35 was also rejected as being unpatentable over Golden in view of Corlett. Independent Claim 35 has been amended to more clearly define the differences existing between the present invention and these references. Specifically, step c of Claim 35 has been amended to clarify that the scheduled payments are made by withdrawing the periodically-determined amounts from the account value. Step e has been amended to further clarify that the

scheduled payments will be made for the period of the benefit payments, even if the account value is exhausted before all of the payments have been made (i.e., even if the account value reaches zero or some other value which is less than the amount of the scheduled payment). As has been previously noted, this situation can never happen in the embodiments described by Golden. The "guaranteed" minimum payments under the Golden embodiments are so called because they are fully funded from the outset of the program. Payments may exceed these amounts depending on the performance of non-guaranteed investments. However, none of the embodiments disclosed by Golden contemplate payments made to an owner or beneficiary other than from the owner's contributions or earnings thereon. There is nothing in the Corlett patent to suggest modifying Golden in this regard. Accordingly, independent Claim 35, as amended, is allowable over the combination of Golden and Corlett, as discussed above in connection with the other independent claims.

Claims 36-38 have been amended to conform to the amendments of independent Claim 35. These claims are considered by Applicants and the undersigned to be allowable for the same reasons as set forth above.

Claims 44-51 were rejected by the Examiner as being unpatentable over Golden. These claims have been canceled from the present application. Applicants specifically note that cancellation of these claims is without prejudice, and specifically traverse the Examiner's rejections under Golden. The subject matter of Claims 44-51 is not surrendered by Applicants. This subject matter is claimed in related CIP application Serial No. 09/804,667 filed on March 12, 2001, which is assigned to the assignee of the present application. Claims 44-51 have been canceled from the present application to expedite the prosecution thereof, and so as to completely respond to the Examiner's Office Action.

A sincere and earnest effort has been made to fully and completely respond to the Examiner's Office Action, and to place this application into condition for allowance. Accordingly, reconsideration is respectfully requested. Should the Examiner have any questions with regard to this response, or to this application in general, a telephone call to Applicants' undersigned representative at the number listed below would be greatly appreciated and should expedite the further prosecution of this application for all concerned.

A *Petition for Extension of Time* under 37 CFR §1.136 accompanies the filing of this document. In the event an additional extension is deemed necessary or appropriate, Applicants hereby petition for such extension of time and hereby authorizes the Commissioner to deduct the required fees from Deposit Account No. 02-1010 (37168/82045).

Please credit any over payments or charge any additional fees, including extension of time fees, to the Deposit Account of Barnes & Thornburg, Account No. 02-1010 (37168/82045).

Respectfully submitted,

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**MARKED-UP VERSION OF REWRITTEN CLAIMS
IN AMENDMENT TO U.S. PATENT APPLICATION NO. 09/406,290
ATTORNEY DOCKET NO. 37168-82045**

Please amend Claims 35-38 as follows:

35. A computerized method for administering a variable annuity plan having a guaranteed minimum payment feature associated with a systematic withdrawal program, and for periodically determining an amount of a scheduled **[withdrawal]** payment to be made to the owner under the plan, comprising the steps of:

a) storing data relating to a variable annuity account, including data relating to at least one of an account value, a withdrawal rate, **<u>a scheduled payment,</u>** a payout term and a period of benefit payments;

b) determining an initial scheduled **[withdrawal]** payment;

c) periodically determining the account value associated with the plan **<u>and making the scheduled payment by withdrawing that amount from the account value</u>**;

d) monitoring for an unscheduled withdrawal made under the plan and adjusting the amount of the scheduled **[withdrawal]** payment in response to said unscheduled withdrawal; and

e) periodically paying the scheduled **[withdrawal]** payment to the owner **<u>for the period of benefit payments, even if the account value is exhausted before all payments have been made</u>**.

36. The method of Claim 35, wherein the amount of the scheduled withdrawal payment is determined by the following formula:

[Withdrawal] **Scheduled Payment** = Account $Value_o$ x WD Rate

Where: **[Withdrawal]** **Scheduled Payment** = dollar amount of the **[withdrawal]** **scheduled** payment

Account $Value_o$ = initial account value

WD Rate = % of the initial account value used to determine the initial scheduled **[withdrawal]** payment.

37. The method of Claim 35, wherein the account value is periodically determined by the following formula:

Account $Value_{t+1}$ = Max[(Account $Value_t$ - Withdrawal), 0] x (1+i)

Where: Account $Value_{t+1}$ = account value at time t+1

Account $Value_t$ = account value at time t

Withdrawal = dollar amount of the **[withdrawal]** **scheduled** payment at time t

i = net fund performance during period t to t+1.

38. The method of Claim 35, wherein the scheduled **[withdrawal]** payment is adjusted in response to an unscheduled withdrawal, according to the following formula:

[Withdrawal'] **Scheduled Payment'** = **[Withdrawal]** **Scheduled Payment** x (1 + $USWithdrawal_t$/Account $Value_t$)

Where: **[Withdrawal']** **<u>Scheduled Payment'</u>** = **[withdrawal]** **<u>scheduled</u>** payment after an adjustment for an unscheduled withdrawal

[Withdrawal] **<u>Scheduled Payment</u>** = **[withdrawal]** **<u>scheduled</u>** payment prior to an adjustment for an unscheduled withdrawal

US Withdrawal_t = unscheduled withdrawal made at time t

Account Value_t = account value at time t, prior to the unscheduled withdrawal.